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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,218	01/22/2004	Bruce Babashan	21782.00	2750
37833 7590 04/18/2008 LITMAN LAW OFFICES, LTD. P.O. BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215				
EXAMINER				
EVANSKO, GEORGE ROBERT				
ART UNIT		PAPER NUMBER		
3762				
MAIL DATE		DELIVERY MODE		
04/18/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/761,218

**Applicant(s)**

BABASHAN, BRUCE

**Examiner**

George R. Evanisko

**Art Unit**

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6, 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CD/CD)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election with traverse of the wrist watch embodiment in the reply filed on 1/28/08 is acknowledged. The traversal is on the ground(s) that a search and examination of the entire application could be accomplished without a serious burden on the Examiner is not persuasive since the wrist watch embodiment and stand-up exercise embodiment have two divergent searches. In addition, the applicant has not stated on the record that the embodiments are obvious variants of each other. The requirement is still deemed proper and is therefore made FINAL.

Claims 6 and 15-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected embodiment, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 1/28/08.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geneen (3978849) in view of Havel (6690343). Geneen discloses the claimed invention as a wristwatch with digital display and using colors to indicate heart rate (e.g. figure 5, col 5) with the display over substantially the entire top surface and the use of a microcontroller as the circuitry in the

wristwatch, but does not disclose the color is over the entire top surface or in the alternative, specifically use the term microcontroller. Havel teaches that it is known to have the entire background display display a color representing a measured value so the wearer can quickly and easily evaluate the measured condition. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate into the wrist watch display device as taught by Geneen the use of the entire background display displaying a color representing a measured value to provide a wrist watch with the entire background display displaying a color representing a measured value to provide the predictable results of allowing the wearer to quickly and easily evaluate the measured condition. In addition, it would have been obvious to include in Geneen and Havel a microcontroller to have the heart rate algorithm programmed in since it was known in the art that wrist watch devices use a microcontroller with a heart rate algorithm programmed in to provide the predictable results of a low power, small circuit to control the system.

Claims 2-5, 7, and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geneen in view of Havel (modified Geneen) as applied to claims 1 and 8 above. Modified Geneen discloses the claimed invention except for the case with radially contacts and rotating bezel to operate as a user variable input device to select user variables such as age, gender, height, etc, for a user variable display, and the use of the Karvonen formula to change the heart rate colors, using such colors as green, blue, red, yellow, and black to indicate the different heart rate ranges. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wrist watch measuring device as taught by modified Geneen, with the case with radially contacts and rotating bezel to operate as a user variable input device

to select user variables such as age, gender, height, etc, for a user variable display, and the use of the Karvonen formula to change the heart rate colors, using such colors as green, blue, red, yellow, and black to indicate the different heart rate ranges since it was known in the art that wrist watch measuring devices use: a case with radially contacts and rotating bezel to operate as a user variable input device to select user variables such as age, gender, height, etc, for a user variable display to provide the predictable results of the appearance of a normal watch that will allow the user to easily enter and visually acknowledge variables that are entered into the heart rate algorithm to allow the algorithm to be based on the particular patient to correctly indicate the patients heart rate condition; and the use of the Karvonen formula to change the heart rate colors, using such colors as green, blue, red, yellow, and black to indicate the different heart rate ranges, to provide the predictable results of a conventional, well known formula to accurately determine the patients optimal heart range for exercise, etc (in addition, as applicant points out on page 3 of their specification, this is a well known formula). Finally, the use of the different colors for the different ranges are not considered to be novel and unobvious over the prior art since it is well known to use different particular colors for different particular heart rate ranges and that the choice of the particular color for the range is an obvious design choice that does not patentably distinguish over the prior art. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the different color range as taught by modified Gencen in view of one having ordinary skill in the art, because it effectively indicates the patients heart rate range with color.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Narayanaswami and Nissilaet are examples of a user entered input device. Havel, 4647217, and Nissila are other examples of a color coded heart rate display.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Evanisko whose telephone number is 571 272 4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571 272 4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/  
Primary Examiner  
Art Unit 3762

GRE  
4/14/08